

Subpart I—Miscellaneous

CHAPTER 95—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

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§ 9501. Internal Revenue Service personnel flexibilities

(a) Any flexibilities provided by sections 9502 through 9510 of this chapter shall be exercised in a manner consistent with—

- (1) chapter 23 (relating to merit system principles and prohibited personnel practices);
- (2) provisions relating to preference eligibles;
- (3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);
- (4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and
- (5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Secretary of the Treasury under section 1104(a)(2).

(b) The Secretary of the Treasury shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

(c) Employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any flexibility provided by sections 9507 through 9510 of this chapter unless the exclusive representative and the Internal Revenue Service have entered into a written agreement which specifically provides for the exercise of that flexibility. Such written agreement may be imposed by the Federal Services Impasses Panel under section 7119.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 712.)

§ 9502. Pay authority for critical positions

(a) When the Secretary of the Treasury seeks a grant of authority under section 5377 for critical pay for 1 or more positions at the Internal Revenue Service, the Office of Personnel Management may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving

critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 712; amended Pub. L. 110–161, div. D, title I, § 107, Dec. 26, 2007, 121 Stat. 1977.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–161 substituted “Office of Personnel Management” for “Office of Management and Budget”.

§ 9503. Streamlined critical pay authority

(a) Notwithstanding section 9502, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Secretary of the Treasury may, Before¹ September 30, 2013, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Internal Revenue Service, if—

(1) the positions—

(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

(B) are critical to the Internal Revenue Service's successful accomplishment of an important mission;

(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

(3) the number of such positions does not exceed 40 at any one time;

(4) designation of such positions are approved by the Secretary of the Treasury;

(5) the terms of such appointments are limited to no more than 4 years;

(6) appointees to such positions were not Internal Revenue Service employees prior to June 1, 1998;

(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

(8) all such positions are excluded from the collective bargaining unit.

(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 712; amended Pub. L. 110–161, div. D, title I, § 105, Dec. 26, 2007, 121 Stat. 1977; Pub. L. 113–6, div. F, title III, § 1309, Mar. 26, 2013, 127 Stat. 418.)

REFERENCES IN TEXT

The provisions of this title governing appointments in the competitive service, referred to in subsec. (a), are classified generally to section 3301 et seq. of this title.

¹ So in original. Probably should not be capitalized.

AMENDMENTS

2013—Subsec. (a). Pub. L. 113–6, which directed substitution of “Before September 30, 2013” for “Before July 23, 2013” wherever appearing, was executed by making the substitution for “before July 23, 2013” in introductory provisions to reflect the probable intent of Congress.

2007—Subsec. (a). Pub. L. 110–161 substituted “before July 23, 2013” for “for a period of 10 years after the date of enactment of this section” in introductory provisions.

§ 9504. Recruitment, retention, relocation incentives, and relocation expenses

(a) Before September 30, 2013 and subject to approval by the Office of Personnel Management, the Secretary of the Treasury may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives.

(b) Before September 30, 2013, the Secretary of the Treasury may pay from appropriations made to the Internal Revenue Service allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9502 or 9503 after June 1, 1998.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 713; amended Pub. L. 110–161, div. D, title I, § 106, Dec. 26, 2007, 121 Stat. 1977; Pub. L. 113–6, div. F, title III, § 1309, Mar. 26, 2013, 127 Stat. 418.)

AMENDMENTS

2013—Subsecs. (a), (b). Pub. L. 113–6 substituted “Before September 30, 2013” for “Before July 23, 2013”.

2007—Subsecs. (a), (b). Pub. L. 110–161 substituted “Before July 23, 2013” for “For a period of 10 years after the date of enactment of this section”.

§ 9505. Performance awards for senior executives

(a) Before September 30, 2013, Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service may be paid a performance bonus without regard to the limitation in section 5384(b)(2) if the Secretary of the Treasury finds such award warranted based on the executive’s performance.

(b) In evaluating an executive’s performance for purposes of an award under this section, the Secretary of the Treasury shall take into account the executive’s contributions toward the successful accomplishment of goals and objectives established under the Government Performance and Results Act of 1993, subtitle III of title 40, Revenue Procedure 64–22 (as in effect on July 30, 1997), taxpayer service surveys, and other performance metrics or plans established in consultation with the Internal Revenue Service Oversight Board.

(c) Any award in excess of 20 percent of an executive’s rate of basic pay shall be approved by the Secretary of the Treasury.

(d) Notwithstanding section 5384(b)(3), the Secretary of the Treasury shall determine the aggregate amount of performance awards available to be paid during any fiscal year under this section and section 5384 to career senior executives

in the Internal Revenue Service. Such amount may not exceed the maximum amount which would be allowable under paragraph (3) of section 5384(b) if such paragraph were applied by substituting “the Internal Revenue Service” for “an agency”. The Internal Revenue Service shall not be included in the determination under section 5384(b)(3) of the aggregate amount of performance awards payable to career senior executives in the Department of the Treasury other than the Internal Revenue Service.

(e) Notwithstanding section 5307, a performance bonus award may not be paid to an executive in a calendar year if, or to the extent that, the executive’s total annual compensation will exceed the maximum amount of total annual compensation payable at the rate determined under section 104 of title 3.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 713; amended Pub. L. 107–217, § 3(a)(2), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108–7, div. J, title VI, § 645(a), Feb. 20, 2003, 117 Stat. 474; Pub. L. 110–161, div. D, title I, § 106, Dec. 26, 2007, 121 Stat. 1977; Pub. L. 113–6, div. F, title III, § 1309, Mar. 26, 2013, 127 Stat. 418.)

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (b), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of this title, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

AMENDMENTS

2013—Subsec. (a). Pub. L. 113–6 substituted “Before September 30, 2013” for “Before July 23, 2013”.

2007—Subsec. (a). Pub. L. 110–161 substituted “Before July 23, 2013” for “For a period of 10 years after the date of enactment of this section”.

2003—Subsec. (d). Pub. L. 108–7 substituted “Such amount may not exceed the maximum amount which would be allowable under paragraph (3) of section 5384(b) if such paragraph were applied by substituting ‘the Internal Revenue Service’ for ‘an agency.’” for “Such amount may not exceed an amount equal to 5 percent of the aggregate amount of basic pay paid to career senior executives in the Internal Revenue Service during the preceding fiscal year.”

2002—Subsec. (b). Pub. L. 107–217 substituted “subtitle III of title 40” for “division E of the Clinger-Cohen Act of 1996 (Public Law 104–106; 110 Stat. 679)”.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–7, div. J, title VI, § 645(b), Feb. 20, 2003, 117 Stat. 474, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years beginning after September 30, 2002.”

§ 9506. Limited appointments to career reserved Senior Executive Service positions

(a) In the application of section 3132, a “career reserved position” in the Internal Revenue Service means a position designated under section 3132(b) which may be filled only by—

- (1) a career appointee; or
- (2) a limited emergency appointee or a limited term appointee—

(A) who, immediately upon entering the career reserved position, was serving under a